IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14237 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RABARI PIRABHAI VALABHAI

Versus

STATE OF GUJARAT

Appearance:

MR SK JHAVERI for Petitioner No. 1-2

Mr. K.M.Parikh, Assistant Government Pleader for Respondent No. 1

MR MC BAROT for Respondent No. 2-4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 01/08/2001

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the judgment and order dated 29th April, 1993 in Revision Application no.TEN.B.A.189 of

1993 passed by the Gujarat Revenue Tribunal, judgment and order dated 4th May, 1990 passed by the Deputy Collector, Palanpur in Ceiling Appeal no.1 of 1990 and the decision dated 15th October, 1981 of the Mamlatdar and ALT in Ceiling case no. 941 of 1976.

2. During the proceedings under Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the "Act") in case no.1941 of 1976, it was found that the petitioner no. 2 was holding agricultural land admeasuring 52 acres and 22 gunthas in his own name and 11 acres and 37 gunthas of land in the name of the petitioner no.2 and two sisters. Thus, the petitioner no.2 was holding 64 acres and 19 gunthas of agricultural land. In the inquiry under the provisions of Section 16 of the Act, the Mamlatdar and ALT, Deesa found 19 acres and 19 gunthas as surplus land. Notice was therefore, served under section 16(2-A) of the Act for confirmation of the surplus land declared under section 16(2) of the Act. The petitioner no.2 did not file any reply and the Mamlatdar confirmed the finding by his order dated 15.10.81 holding that the petitioner no. 2 was holding surplus land admeasuring 19 acres and 19 gunthas and it has been ordered to be vested in the State Government subject to the provisions of the Act free from all encumbrances. Being aggrieved by the said order of the Mamlatdar and ALT, the petitioner no.1 filed appeal no.1 of 1990 before Deputy Collector, Palanpur. The Deputy Collector confirmed the findings recorded by the Mamlatdar and ALT and remanded the matter to the Mamlatdar and ALT for demarcation of the surplus land by his order dated 4.5.1990. Pursuant to the order dated 4.5.90 of the Deputy Collector, the Mamlatdar demarcated the surplus land vide his order dated 12.6.1990. The respondent nos. 2, 3 and 4 filed Ceiling Appeal no. 3 before the Deputy Collector, who allowed that appeal vide his order dated 17.12.1990. It is stated that Revision Application no.190 of 1991 is still pending before the Revenue Tribunal. The petitioner no.1 did not file any appeal before Deputy Collector nor any Revision Application before Gujarat Revenue Tribunal. However, the respondent no. 2 filed Revision Application no. TEN.BA-189/1991 before Gujarat Revenue Tribunal. In the Revision Application, the petitioner no. 2, the owner of the land was impleaded as respondent no. 2. The Gujarat Revenue Tribunal dismissed the Revision Application vide order dated 29th April, 1993. The petitioners have therefore, filed the present petition against the orders of Gujarat Revenue Tribunal, Deputy Collector, and Mamlatdar and ALT.

3. Heard the learned advocates for the parties and perused the relevant papers on record.

4. The contention of the learned counsel for the petitioners is that it is true that due to certain reasons, the owner of the land, i.e. the petitioner no. 2 had not filed any objection under section 16(2-A) of the Act, appeal before Deputy Collector and Revision Application before GRT, but the fact remains that the petitioner no. 2 was examined in the proceedings under section 16 of the Act on 6.5.77 wherein he has stated that he was holding the property on his behalf, his wife Divaben Nathaji and two major sons, Himatsinh and Savansinh aged about 28 years and 20 years respectively, and two minor sons Radhaji Nathaji and Samtuji aged about 8 years and 6 years respectively. Under the provisions of the Act, the major sons are also entitled for separate units and the minor sons are also entitled to get 1/5th each as share of one unit. Thus, on the basis of the statement of the petitioner, the petitioner being the head of joint Hindu family was entitled for 3 and 2/5 units. The Mamlatdar, while deciding the inquiry under the provisions of section 16 of the Act, has not at all considered the units to be allotted to the petitioner and his family members and the same has not been considered even by the Deputy Collector or by Gujarat Revenue Tribunal when appeal or Revision were filed before them. The petitioner no.2 has been given statutory right as well as constitutional guarantee under Article 300-A of the Constitution of India. The erroneous orders passed by the authorities are null and void ab initio and against constitutional rights of the petitioners. As such, these orders passed by the authorities are not binding on the petitioner no.2 though he has not agitated his claim against constitutional rights of the petitioners. As such, these orders passed by the authorities are not binding on the petitioner no.2 though he has not exercised his right under section 16(2-A) of the Act and has not filed appeal or Revision before appropriate authority. Even those orders passed by the authorities are illegal, null and void ab initio and so they cannot be implemented against the petitioner no.2. In this regard, he also relied on the decision of this Court in the case of Manaklal vs. Competent Authority of Additional Collector and others reported in 1994(2) GCD, 690 wherein it has been observed as under:

> "Since the notification under section 10(1) of the Act was not known by them, they could not avail of the opportunity to lodge their claim under section 10(2) of the Act qua their share in

the disputed land. So would be the case with publication of the notification under section 10(3) of the Act. In that view of the matter, no fault can be found with the petitioners for their approaching this Court only when an attempt to take possession of the dispute land qua their share was made. In fact, it does not lie in the mouth of the respondents to urge such contention before this Court in view of the afoersaid constitutional guarantee incorporated in Article 300A of the Constitution of India. The reason therefor is quite simple. The disputed land has been declared surplus without giving any opportunity of hearing to the deceased or the present petitioners. The share of the deceased and now of the petitioners in the disputed land has been declared surplus and it would mean that the petitioners are deprived of their property without getting an opportunity of hearing. Such an action on the part of the concerned Competent Authority would amount to deprivation of the petitioners of their property without any authority of law. The Act provides for giving an opportunity of hearing to the concerned landholder before declaration of his land to be surplus. In the present case, even at the cost of repetition it may be reiterated that neither the deceased nor the present petitioners got an opportunity of hearing before their share in the disputed land was declared surplus."

4. As against this, the learned Assistant Government Pleader contended that after the inquiry under section 16(2) of the Act, the petitioner did not file any reply to the notice issued under section 16(2-A) of the Act whereby an opportunity was afforded. No appeal or Revision application was filed by the petitioner no.2 before the Deputy Collector and Gujarat Revenue Tribunal against the impugned orders. This Court should not take cognizance of the rights of the petitioner no.2 at this stage under Articles 226 and 227 of the Constitution of India. It is also contended that the Revision Application was not filed by the petitioner no.2 before Gujarat Revenue Tribunal and so there was no Revision Application of the petitioner no.2 before Gujarat Revenue Tribunal and this petition filed on behalf of the petitionern no.2 is not at all maintainable in law. It is further contended that the authorities below have recorded concurrent findings of fact which cannot be interfered with by this Court under Articles 226 and 227 of the Constitution of India.

5. I have carefully considered the contentions of the learned counsel for the parties. It appears that during the proceedings under section 16 of the Act before Mamlatdar and ALT, the petitioner no.2 examined himself and has given all the details of the property including members of his family. The Talati cum Mantri was also examined and he has given particulars of the land which was being held by the petitioner no. 2. Some ration card was also produced before the Mamlatdar and ALT giving out the names of 12 members of the family of the petitioner no.2. On the strength of the statement made by the petitioner during the inquiry proceedings under section 16 of the Act, the learned counsel for the petitioner submitted that if any erroenous order has been passed by any authority against the legal and constitutional right, that order is illegal, null and void and is not sustainable in the eye of law and it cannot become operative at all. I have considered the contention of the learned counsel for the petitioner. It appears that the petitioner had been examined on 16.5.77 in the inquiry proceedings under section 16 of the Act wherein he has given out all particulars regarding the land as well as members of his family, showing his wife, two major sons and two minor sons besides himself. Under the provisions of the Ceiling Act, the authorities are required to pass appropriate orders regarding units to be allotted to major members and minor sons. The authorities have not considered and passed any orders for allotment of units to the petitioners as well as other members in accordance with law as provided under section 6(3)(C) and 6(3)(B) of the Act. Without considering the statutory provisions of law, the orders have been passed and the authorities have ignored legal as well as constitutional rights of the petitioner and his family members. As such, the orders cannot be binding on the petitioner no. 2. It is true that the petitioner has not filed any objection under section 16(2-A) of the Act or appeal before Deputy Collector and Revision application before Gujarat Revenue Tribunal. The petitioner no. 2 might have been under an impression that he has already disposed of the property to the petitioner no. 1 and respondent nos. 2, 3 and 4, he has no concern and at the most they will contest the proceedings before Gujarat Revenue Tribunal. The learned counsel for the petitioner no.2 was not permitted to argue the case under the impression that he has no right to do so because after the Deputy Collector remanded the case in Ceiling Appeal no. 1 of 1990, he had not taken any part in the subsequent proceedings and he has not filed any Revision Application and he accepted the excess

land declared by the authorities concerned or he might not have been present at the relevant time when the proceedings under section 16(2-A) of the Actor at the time when the appeal before the Deputy Collector was filed or before Gujarat Revenue Tribunal in the Revision Application. Though there is no averment in the petition that he was not available due to any reason, but either it is fault on his part or he was not available during that period, but he cannot be denied legal and constitutional rights conferred upon him by the Constitution. The Mamlatdar and ALT has not taken into account this fact. Even the subsequent authorities have not taken into account the legal and constitutional rights of the petitioner no.2 and material on record. If any order is ultra vires the Constitution or is illegal, this Court cannot close its eyes and has to deliver justice to the parties. In the facts and circumstances of the case, I think it proper to remand the matter to the Mamlatdar and ALT, Deesa to consider and decide the case of the petitioner no.2 in respect of entitlement of the land as well as other members under sections 6(3-B) and 6(3-C) of the Act.

7. In the result, this petition deserves to be allowed and is accordingly allowed. The judgment and order dated 29th April, 1993 in Revision Application no. TEN.B.A. 189 of 1991 passed by the Gujarat Revenue Tribunal, the order dated 4th May, 1990 in Ceiling Appeal no. 1 of 1990 passed by the Deputy Collector, Palanpur and the decision dated 15th October, 1981 of the Mamlatdar and Agricultural Lands Tribunal, Deesa in Ceiling case no. 941 of 1976 are hereby quashed and set aside. The matter is remanded to the Mamlatdar and ALT, Deesa and he is directed to consider the evidence and material on record and decide the share and units of the petitioner no.2 in accordance with the provisions of section 6(3-B) and (3-C) of the Ceiling Act within a period of three months from the date of receipt of writ of this Court, without being influenced by the observations made in this judgment. Rule is made absolute accordingly with no order as to costs.

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